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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,169	04/14/2004	Michael Primm	1017-0036-US	6353
60533	7590	05/18/2007	EXAMINER	
TOLER SCHAFFER, LLP			ALAM, SHAHID AL	
8500 BLUFFSTONE COVE			ART UNIT	PAPER NUMBER
SUITE A201			2162	
AUSTIN, TX 78759				

MAIL DATE	DELIVERY MODE
05/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/824,169	PRIMM, MICHAEL	
	Examiner	Art Unit	
	Shahid Al Alam	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 13 March 2007.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-35 is/are pending in the application.
- 4a) Of the above claim(s) 17-35 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-16 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 14 April 2004 is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>08192004-09092005</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1 – 16 are pending in this Office action.

Claim Rejections - 35 USC § 101

2. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 8 – 14, 20 – 24 and 32 – 34 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

To be statutory, a claimed computer-related process must either: (A) result in a physical transformation outside the computer for which a practical application is either disclosed in the specification or would have been known to a skilled artisan, or (B) be limited to a practical application with useful, concrete and tangible result.

The claim recites program instructions operable to direct the processor to implement a kernel-mode device driver for manipulating a journal based data system associated with data received via the sensor interface.

In the above limitation, there is no physical transformation being claimed, a practical application would be established by a useful, concrete and tangible result.

For it to be a tangible result, it must be more than a thought or a computation and must have a real world value rather than being an abstract idea. The invention as recited in the claim direct the processor to implement a kernel-mode device driver for manipulating a journal based data system. It is unclear as to what kind of tangible output is obtained by manipulating a journal based data system.

Art Unit: 2162

The claims lack the necessary physical articles or objects to constitute a machine or a manufacture within the meaning of 35 USC 101. They are clearly not a series of steps or acts to be a process nor are they a combination of chemical compounds to be a composition of matter. As such, they fail to fall within a statutory category. They are, at best, functional descriptive material *per se*.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 – 16 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 6,442,706 issued to Steven B. Wahl et al. ("Wahl").

With respect to claim 1, Wahl teaches a system comprising:

a processor; a sensor interface responsive to the processor; and memory responsive to the processor (see abstract), the memory including:
program instructions operable to direct the processor to implement a kernel-mode device driver for manipulating a journal based data system associated with data received via the sensor interface (column 6, lines 28 – 32 and lines 59 – 67).

Art Unit: 2162

As to claim 2, the kernel-mode device driver runs with supervisor privilege within a kernel of an operating system (column 9, lines 5 – 10).

As to claim 3, the kernel-mode device driver comprises code that runs with kernel privilege and provides access to a hardware device (column 9, lines 5 – 10).

As to claim 4, the memory further comprises program instructions for implementing a monitoring application (column 3, lines 49 – 54).

As to claim 5, a network interface responsive to the processor (column 3, lines 49 – 54).

As to claim 6, the memory further comprises program instructions for implementing a notification application for communicating data events via the network interface (column 2, lines 1 – 6).

As to claim 7, the memory further comprises program instructions for implementing a web server for communicating data via the network interface (column 23, lines 61 – 64).

As to claim 8, the journal based data system includes a plurality of variable definitions (column 6, lines 59 – 67).

As to claim 9, each variable definition of the plurality of variable definitions has an associated variable and includes an oldest update field and a latest update field (column 7, lines 37 – 48).

As to claim 10, the journal based data system includes a plurality of update records (column 7, lines 44 – 48).

Art Unit: 2162

As to claim 11, each variable update record of the plurality of update records has an associated variable and includes a variable value, a next update pointer, and a previous update pointer (column 7, lines 37 – 53).

As to claim 12, the previous update pointer points to an oldest update field of a variable definition associated with the associated variable (column 7, lines 37 – 53).

As to claim 13, the next update pointer points to the latest update field of a variable definition associated with the associated variable (column 7, lines 37 – 53).

As to claim 14, the journal based data system includes a context record (column 7, lines 37 – 38).

As to claim 15, the context record includes a current timestamp field (column 7, lines 38 – 40).

As to claim 16, the context record includes a next update field including a pointer to a next update in a global journal of update records (column 7, lines 41 – 48).

Art Unit: 2162

Conclusion

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahid Al Alam whose telephone number is (571) 272-4030. The examiner can normally be reached on Monday-Thursday 8:00 A.M.- 4:00 P.M..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John E. Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Shahid Al Alam
Primary Examiner
Art Unit 2162

May 13, 2007